

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK, LLC,

8 Debtor.

9 - - - - - x

10 Adv. Case No. 22-01002-mg

11 - - - - - x

12 CELSIUS NETWORK LIMITED et al.,

13 Plaintiff,

14 v.

15 FABRIC VENTURES GROUP SARL,

16 Defendants.

17 - - - - - x

18 Adv. Case No. 22-01179-mg

19 - - - - - x

20 FRISHBERG,

21 Plaintiff,

22 v.

23 CELSIUS NETWORK LLC et al.,

24 Defendants.

25 - - - - - x

Adv. Case No. 22-01003-mg

- - - - - x

YANCHUK,

Plaintiff,

v.

GK8 Ltd/GK8 UK Limited/GK8 U.S.A, LLC,

Defendants.

- - - - - x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

March 8, 2023

11:02 AM

B E F O R E :

HON MARTIN GLENN

U.S. BANKRUPTCY JUDGE

ECRO: F. FERGUSON

1 HEARING re Status Update

2  
3 HEARING re Hearing Using Zoom for Government RE: Second  
4 Motion to Extend Exclusivity Period for Filing a Chapter 11  
5 Plan and Disclosure Statement. (Doc## 1940, 1996, 2008,  
6 2010, 2011, 2013 to 2015, 2038, 2043, 1645, 1317, 1764,  
7 2043, 2046, 2047, 2048, 2052, 2057, 2058, 2066, 2067, 2068,  
8 2071, 2088, 2094, 2101, 2111, 2157, 2158, 2159, 2162, 2163,  
9 2168, 2184, 2186)

10  
11 HEARING re Hearing Using Zoom for Government RE: Motion of  
12 the Official Committee of Unsecured Creditors to Approve  
13 Joint Stipulation and Agreed Order between the Official  
14 Committee of Unsecured Creditors and the Debtors with  
15 respect to Certain Claims and Causes of Action Belonging to  
16 the Debtors Estates. (Doc## 2054, 2059, 2146, 2154)

17  
18 HEARING re Hearing Using Zoom for Government RE: Debtors  
19 Motion Seeking Entry of an Order (I) Striking Certain Items  
20 from Appellants Designation of Record on Appeal and (II)  
21 Granting Related Relief. (Doc# 2085, 2111, 2164, 2187)

1 HEARING re Hearing Using Zoom for Government RE: Debtor's  
2 Motion Seeking Entry of an Order (I) Striking Certain Items  
3 from Kulpreet Khanujas Designation of Record on Appeal and  
4 (II) Granting Related Relief. (Doc# 2126, 2164, 2187, 2063)

5  
6 HEARING re Hearing Using Zoom for Government RE: Debtor's  
7 Motion Seeking Entry of an Order (I) Striking Certain Items  
8 from Courtney Burks Steadmans Designation of Record on  
9 Appeal and (II) Granting Related Relief. (Doc# 2127, 2164,  
10 2187, 2121)

11  
12 HEARING re Adversary proceeding: 22-01179-mg Frishberg v.  
13 Celsius Network LLC et al  
14 Pretrial Conference Using Zoom for Government. (Doc ## 1 to  
15 13)

16  
17 HEARING re Adversary proceeding: 23-01002-mg Celsius Network  
18 Limited v. Fabric Ventures Group SARL  
19 Pre-Trial Conference Using Zoom for Government. (Doc # 1 to  
20 3)

21  
22 HEARING re Adversary proceeding: 23-01003-mg Yanchuk v. GK8  
23 Ltd/GK8 UK Limited/GK8 U.S.A, LLC  
24 Pre-Trial Conference Using Zoom for Government. (Doc # 1 to  
25 3)

1 HEARING re Hearing Using Zoom for Government RE: Official  
2 Committee of Unsecured Creditors' Application for Entry of  
3 an Order Authorizing the Employment and Retention of Selendy  
4 Gay Elsberg PLLC as Co-Counsel Effective as of January 8,  
5 2023. (Doc # 1964, 2156)

6  
7 HEARING re Hearing Using Zoom for Government RE: Motion for  
8 Order to Show Cause Why the Debtors Should not Retain Willis  
9 Towers Watson. (Docifit 2042 to 2044, 1392, 1398, 1444,  
10 1446, 1556, 1613, 1679, 1703, 1706, 1771, 1774, 1829, 1928,  
11 2087)

12  
13 HEARING re Doc# 2198 Amended Notice of Agenda for Hearing to  
14 be held March 8, 2023, at 11:00 A.M. (Prevailing Eastern  
15 Time)

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17  
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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 MCCARTER ENGLISH, LLP

4 Attorneys for Certain Borrowers

5 245 Park Avenue

6 New York, NY 10167

7

8 BY: DAVID J. ADLER

9

10 WHITE & CASE LLP

11 Attorneys for Official Committee of Unsecured Creditors

12 111 South Wacker Drive, Suite 5100

13 Chicago, IL 60606-4302

14

15 BY: GREGORY F. PESCE

16

17 WHITE & CASE LLP

18 Attorneys for the Official Committee of Unsecured

19 Creditors

20 555 South Flower Street, Suite 2700

21 Los Angeles, CA 90071

22

23 BY: AARON COLODNY

24

25

1 SELENDY GAY ELSBERG PLLC

2 Attorneys for Official Committee of Unsecured Creditors

3 1280 Avenue of the Americas, 17th Floor

4 New York, NY 10104

5  
6 BY: JENNIFER SELENDY

7  
8 LOWENSTEIN SANDLER

9 Attorneys for Proposed Lead Plaintiffs

10 One Lowenstein Drive

11 Roseland, NJ 07068

12  
13 BY: MICHAEL S. ETKIN

14  
15 KIRKLAND & ELLIS LLP

16 Attorneys for the Debtor

17 300 N. LaSalle

18 Chicago, IL 60654

19  
20 BY: CHRIS KOENIG

1 UNITED STATES DEPARTMENT OF JUSTICE

2 Attorneys for the U.S. Trustee

3 1 Bowling Green

4 New York, NY 10004

5  
6 BY: SHARA CLAIRE CORNELL

7  
8 TROUTMAN PEPPER HAMILTON SANDERS LLP

9 Attorneys for Ad Hoc Group of Withhold Account Holders

10 4000 Town Center, Suite 1800

11 Southfield, MI 48075

12  
13 BY: DEBORAH KOVSKY-APAP

14  
15 COURTNEY BURKS STEADMAN

16 Pro Se Creditor

17  
18 LAWRENCE C. PORTER

19 Pro Se Creditor

20  
21 DANIEL A. FRISHBERG

22 Plaintiff

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24 IMMANUEL HERRMANN

25 Pro Se Creditor



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SAMUEL ANDERSON

Pro Se Creditor

ALSO PRESENT TELEPHONICALLY:

CHRIS FERRARO

1 P R O C E E D I N G S

2 THE COURT: Thank you and good morning, everybody.  
3 All right, so we have a long agenda, let's start to go  
4 through it. First, we're going to start with the -- so I'm  
5 looking at the agenda for today's hearing. Let's start with  
6 the company status update.

7 MR. KOENIG: Thank you, Your Honor. For the  
8 record, Chris Koenig, Kirkland & Ellis, for the Debtors. As  
9 we have, you know, we have Mr. Ferraro, who's the Debtor's  
10 interim chief executive officer on the line to provide the  
11 business update. Given the data and Mr. Ferraro's  
12 presentation, we filed some slides to help, you know, guide  
13 Mr. Ferraro's statement. We filed this at Docket No. 2197.

14 My colleague, Elizabeth Jones, is on the line. If  
15 she can have sharing privileges on the Zoom, we can put the  
16 slides up for everybody to look at.

17 THE COURT: Yes, she can, certainly.

18 CLERK: All right. She's been made a cohost.

19 THE COURT: All right, and I have a copy in front  
20 of me as well, Mr. Koenig.

21 MR. KOENIG: Wonderful. I'll just wait to see the  
22 slides on the...

23 THE COURT: Absolutely.

24 MR. KOENIG: Okay, looks like we have it. So, Mr.  
25 Ferraro, could you please provide a general update about the

1 company's current operations.

2 MR. FERRARO: Yeah. Hello and good morning, Your  
3 Honor.

4 THE COURT: Good morning.

5 MR. FERRARO: To date, we have good progress with  
6 respect to custody withdrawals in our mining operations.  
7 Specifically, we started processing custody withdrawals for  
8 eligible users on Thursday, March 2nd. Additionally, we've  
9 seen operational and margin improvements in our mining  
10 business. I will also be giving a quick update on the cash  
11 position in a few minutes, but let's jump right in and get  
12 started.

13 MR. KOENIG: All right. So, Mr. Ferraro, let's  
14 get started with the current status of the custody account  
15 withdrawals, including the KYC process and the processing of  
16 the actual withdrawals themselves.

17 MR. FERRARO: Okay, perfect. As a reminder, on  
18 December 20th, the Court authorized Celsius to return  
19 custody of coins to eligible users. Celsius is currently  
20 allowed to distribute 94 percent of each eligible user's  
21 distributable custody assets, less the transaction fees.

22 On February 15th, we opened up the system for  
23 users to refresh their KYC data. This is a pretty simple  
24 and quick process. A user logs onto the application and is  
25 directed to verify their identity information and upload a

1 government ID. Additionally, users are required to enter  
2 the destination wallet address. In the last three weeks,  
3 almost 60 percent of the users by count that are eligible to  
4 withdraw have finished this process. Measured in value,  
5 those 60 percent of users represent 80 percent of the amount  
6 of cryptocurrency that is eligible to be withdrawn from the  
7 custody program.

8 I will go through additional details on the next  
9 slide.

10 Beginning on March 2nd, eligible users who  
11 finished the KYC process were allowed to begin custody  
12 withdrawals. As of yesterday, customers had completed  
13 withdrawals of 17.7 million and 3.5 million are in process,  
14 for a total of 21.2 million. Since we opened on Thursday,  
15 we've received over 1900 tickets. Tickets are primarily for  
16 withdrawals needing additional review and customers coming  
17 back to the platform to update their KYC. The oldest ticket  
18 without a Celsius response is less than one day old.

19 Overall, the system is working as planned,  
20 including our security processes. In the last week, 234  
21 transactions were scored as high risk and blocked.  
22 Additionally, our security operations center has handled  
23 over 100 alerts, including five phishing attacks.

24 Now moving on to the next slide.

25 In preparing for these withdrawals, we reset KYC

1 for all eligible customers. As of yesterday, only around .5  
2 percent or 111 users were rejected. Those users will need  
3 to restart the process and upload their government issued  
4 ID. For those who have not started the process, we will  
5 continue to send emails and provide in-application popups  
6 directing users to complete the necessary step.

7 Customers who passed KYC had approximately 33  
8 million of eligible balances. Of that 33 million,  
9 approximately 65 percent have started the process of  
10 withdrawing coins off the platform in the first week. Total  
11 withdraw fees charged are in line with the transaction  
12 costs, specifically gas fees and the costs related to KYC.

13 We will continue to monitor actual versus expected  
14 costs, but as of now, we are satisfied with the current  
15 level of withdrawal fees.

16 THE COURT: Just remind me what those withdrawal  
17 fees are.

18 MR. FERRARO: Well, they range per transaction,  
19 you know, not dependent upon the size. It could be a couple  
20 of dollars, you know, and up. On average, Your Honor, it's  
21 been about 10 basis points, 10 to 15 basis points of the  
22 dollars that have been withdrawn, so pretty low transaction  
23 costs.

24 THE COURT: All right, go ahead.

25 MR. FERRARO: Okay.

1 MR. KOENIG: Thank you, Mr. Ferraro. If there's  
2 nothing else on the custody withdrawal process, can you  
3 provide an update next on the mining operations and the  
4 current status.

5 MR. FERRARO: Yes. Our uptime, or the percentage  
6 of time our machines are hashing, improved in February on  
7 the back of continued low energy prices and improved BTC.  
8 You can see this on the graph in the top left. We have an  
9 uptime of 75 percent from February, a sizeable increase of  
10 the January results and the highest since the petition date.

11 Moving to the graph on the top right. The trend  
12 in BTC price is shown in the blue columns and the orange  
13 line represents the margin percentage.

14 THE COURT: I haven't looked at it this week.  
15 What's the BTC price this week?

16 MR. FERRARO: 22,000 right now.

17 THE COURT: All right.

18 MR. FERRARO: In February, our margin increased to  
19 almost 40 percent driven by this favorable market backdrop.  
20 As a point of comparison, our margin in February was double  
21 what we earned in December. We are currently mining around  
22 a 30 percent margin, down slightly from the lower BTC price  
23 of 22,000.

24 Moving to the graph on the bottom left, which  
25 shows the number of rigs deployed in the blue columns and

1 the average BTC mined per day in the orange line, we had  
2 between 50,000 and 65,000 rigs deployed from the petition  
3 date through December (sound drops). In early January, Core  
4 Scientific rejected our hosting agreement and 37,000 rigs  
5 went offline, which you can see in both the significant  
6 decline in rigs deployed and the drop in the average BTC  
7 mined per day.

8 If you remember at the last update, I announced a  
9 new hosting agreement for 17,000 rigs, and we deployed 7,000  
10 of those rigs in late February and expect that all of the  
11 remaining rigs will be deployed by the end of March. We  
12 also expect to have deployed all the rigs that were  
13 previously at the core sites by the end of the second  
14 quarter, at which point, we should exceed an average of 20  
15 BTC mined per day.

16 Just for Your Honor's benefit, we're currently  
17 mining around 9 BTC per day.

18 Finally on the bottom right, you can see the trend  
19 for EBITDA, which for this business is effectively the net  
20 income adjusted to add back depreciation. EBITDA is a good  
21 proxy for cash from operations. You can see with the  
22 favorable market backdrop, our EBITDA trended up nicely from  
23 the low we saw in December with January and February over 1  
24 million in EBITDA.

25 THE COURT: So what was the price of Bitcoin at

1 the petition date?

2 MR. FERRARO: I don't have it handy. I think it  
3 was around these levels.

4 THE COURT: We can come back to it, but maybe you  
5 can have somebody help you and find that. If there'd been,  
6 in terms of continuing communications from primarily ad hoc  
7 creditors, they've focused on any appreciation in the  
8 Bitcoin price since the petition date and who benefits from  
9 that net increase, so that's why I'm asking about --

10 MR. FERRARO: Got it.

11 THE COURT: -- what it was at the petition date  
12 versus now.

13 MR. FERRARO: Yeah. It was 20,250 as of July 18th  
14 versus the 22,000 as of today, so it's about 10 percent up.

15 THE COURT: Okay, thank you. Go ahead.

16 MR. KOENIG: Thank you, Mr. Ferraro. If nothing  
17 else on mining, can you please turn to the current cash  
18 position of the company.

19 MR. FERRARO: Yeah, flip to the next page. As a  
20 reminder, we started the case with 138 million of cash. We  
21 now have 139 on hand as of February month end. Our cash  
22 from operations was a positive 119 million; 92 of that was  
23 related to the sale of stable coins and withdrawing funds  
24 from exchanges. Adjusting for these two items, our cash  
25 flow from operations was approximately a positive 30



1 million.

2 We invested 50 million in our mining business to  
3 finish the buildout of our proprietary sites and other  
4 investments and paid nearly 70 million related to  
5 restructuring.

6 So net, Your Honor, our cash balance is basically  
7 flat to the petition date as the inflows from operations and  
8 returning deployments under both our investment and  
9 proprietary sites and restructuring costs. And that's all I  
10 have for you today.

11 THE COURT: Thank you very much, Mr. Ferraro. All  
12 right, Mr. Koenig, let's move on. We're on the contested  
13 matters and the motion to extend exclusivity is the first on  
14 the calendar.

15 MR. KOENIG: Thank you, Your Honor. We filed an  
16 amended agenda last night that reflected that the  
17 committee's retention application can go first just so that  
18 those professionals can leave the hearing if that's  
19 acceptable to Your Honor.

20 THE COURT: It certainly is. Mr. Colodny.

21 MR. KOENIG: I believe Mr. Pesce will be handling  
22 this one, Your Honor.

23 THE COURT: Okay. Good morning, Mr. Pesce.

24 MR. PESCE: Good morning, Your Honor. Gregory  
25 Pesce, White & Case, on behalf of the committee. I

1 apologize I'm not on video. I'm in a spot where the  
2 connection is unstable, so forgive me.

3 THE COURT: Okay.

4 MR. PESCE: The first matter that we wanted to  
5 deal with is an uncontested matter, which is the application  
6 to retain Selendy & Gay as co-counsel to the committee. We  
7 filed the application at Docket 1964. Ahead of the  
8 objection deadline, we requested an extension to accommodate  
9 some questions that the United States Trustee had.  
10 Following that extension, supplemental declaration was filed  
11 by Miss Jennifer Selendy of the firm at Docket No. 2191, and  
12 a revised order was filed at Docket 2194.

13 The supplemental declaration includes additional  
14 information regarding a separate team at my law firm that  
15 represents the joint provisional liquidators of FTX, Digital  
16 Markets, a non-debtor affiliate of FTX, and their role in  
17 that bankruptcy case, as well as work that the Selendy firm  
18 will do involving preferred equity holders involving some  
19 discovery issues.

20 My understanding is the United States Trustee has  
21 no further issues based on the declaration that was filed,  
22 and Miss Selendy is online today to answer any questions  
23 that the Court might have.

24 THE COURT: For the benefit of everyone who's  
25 appearing today, just briefly describe what work it is that

1 Selendy & Gay will be undertaking.

2 MR. PESCE: Sure. Following FTX's bankruptcy  
3 filing in November, the joint provisional liquidators of FTX  
4 Digital Markets, which is a brokerage effectively in the  
5 Bahamas, was taken under supervision by the Bahamian Supreme  
6 Court. They appointed joint provisional liquidators, which  
7 are equivalent to receivers.

8 Those receivers then in turn hired a team of White  
9 & Case attorneys to represent them effectively as one of the  
10 largest creditors of FTX. Those provisional liquidators  
11 then filed a recognition proceeding in New York, which was  
12 then subsequently transferred to Delaware, and that team of  
13 White & Case attorneys is representing the provisional  
14 liquidators in that capacity as large creditors effectively  
15 of FTX.

16 As has been reported, there have been transfers  
17 from some FTX entities, although we don't believe from FTX  
18 Digital Markets to Celsius. Out of an abundance of caution,  
19 my firm implemented an ethical screen between that team and  
20 the team that works on the Celsius matter and the additional  
21 disclosures were made. We also then sought to engage the  
22 Selendy firm to deal with any issues that might implicate  
23 the Bahamian joint provisional liquidators.

24 In addition to that, as disclosed in the  
25 retention application and my declarations, prior to the

1 bankruptcy filing, a separate team of people at my firm that  
2 are not working on this matter did approximately \$300,000 of  
3 work on a due diligence project for WESCAP that was  
4 associated with the Celsius investment that WESCAP made. We  
5 have a conflict waiver, but out of an abundance of caution,  
6 we have engaged Selendy to deal with certain discovery  
7 dispute that were implicated by the customer claim  
8 litigation that was litigated before the Court earlier this  
9 year in which they dealt with some discovery issues that  
10 came up.

11 Again, out of an abundance of caution so that  
12 questions regarding what work White & Case had done  
13 previously for WESCAP were not a distraction for that  
14 proceeding where we were -- and the positions that we were  
15 taking in that regard.

16 THE COURT: All right, thank you. Miss Selendy,  
17 do you want to say anything?

18 MS. SELENDY: No, Your Honor. I think it's  
19 covered by Mr. Pesce. Thank you.

20 THE COURT: All right. Miss Cornell?

21 MS. CORNELL: Good morning, Your Honor. Shara  
22 Cornell on behalf of the Office of the United States  
23 Trustee. Everything that Mr. Pesce said is accurate. We've  
24 been working both with the Law Firm of White & Case and with  
25 Miss Selendy's law firm to come to an agreement on these

1 supplemental declarations, and as of right now, we have no  
2 objection to the order being entered.

3 THE COURT: All right, thank you. Anybody else  
4 wish to be heard? All right. The Court the has reviewed  
5 the application for the retention of Selendy & Gay. I'm  
6 satisfied with everything that I've seen so far, the U.S.  
7 Trustee, any issues have been resolved with supplemental  
8 declarations, so that retention is approved. Welcome  
9 aboard, Ms. Selendy.

10 MS. SELENDY: Thank you, Your Honor.

11 THE COURT: Okay. All right, Mr. Koenig, back to  
12 you.

13 MR. KOENIG: Thank you, Your Honor. Again for the  
14 record, Chris Koenig.

15 Turning back to the exclusivity motion, this is a  
16 carryover from the last hearing. We filed the motion to  
17 obtain an extension of the plan filing date through March  
18 31st and the solicitation date through June 30th. Given the  
19 bridge order that was entered at the last hearing, we now  
20 just need a further extension of 23 days in order to reach  
21 March 31st. We think that this extension of just over a  
22 little over three weeks is clearly justified by our progress  
23 to date.

24 Specifically, we've been busy since February 15th  
25 working to turn the plan framework, which were just

1        PowerPoint slides, non-binding that we filed the night  
2        before the hearing, into a binding commitment and we've done  
3        that.

4                On the night of February 28th, we the committee  
5        and NovaWulf, as proposed plan sponsor, signed and filed the  
6        plan sponsor agreement that has a detailed plan term sheet  
7        attached. We filed a notice designating NovaWulf as the  
8        stalking horse bidder and proposed plan sponsor. We filed a  
9        motion to approve certain bid protections for NovaWulf as  
10       the stalking horse bidder. The plan sponsor agreement and  
11       term sheet are attached to that motion, which is filed at  
12       Docket No. 2151.

13               But to be clear, this isn't the end of the sale  
14       process. We filed a notice explaining that the final bid  
15       deadline has been extended to April 17th. The Debtors and  
16       the committee believe that the NovaWulf deal is the best  
17       offer received to date but will continue to engage with  
18       other potential bidders ahead of April 17th to see if  
19       there's a higher or better offer out there, and if there is,  
20       the Debtors and the committee have a broad fiduciary out to  
21       pursue that offer.

22               But we do think that there is very substantial  
23       value to the estates from the plan sponsor agreement and  
24       from NovaWulf's binding agreement to serve as a stalking  
25       horse bidder. If there is a higher or better bid, it will

1 be because of the floor that's set by NovaWulf's stalking  
2 horse bid.

3 So we filed the bid protections motion, which will  
4 be heard on March 21st to provide NovaWulf with expense  
5 reimbursement and a breakup fee as part of their agreement  
6 to serve as a stalking horse bidder. So that's the next  
7 step of the process; on March 21st, this bid protection  
8 hearing will take place.

9 And just briefly before turning to exclusivity, I  
10 want to talk about some of the other key milestones in the  
11 plan sponsor agreement. We and the committee see on social  
12 media that some account holders think it will be years  
13 before Celsius can exit from bankruptcy and before  
14 distributions can be made; that is absolutely not the case.

15 Specifically, we have a milestone to file a plan  
16 and disclosure statement by the end of March, that coincides  
17 with the exclusivity extension we're talking about right  
18 now. We then have a milestone to have that disclosure  
19 statement approved by May 10th. At that point, if the Court  
20 approves the disclosure statement, the voting process will  
21 commence. We'll send out the solicitation materials and the  
22 ballots to account holders. There will be a solicitation  
23 period of about 30 days. Then we have another milestone to  
24 obtain a confirmation order by June 20th, and a milestone  
25 for the plan to become effective and for Celsius to exit

1 from bankruptcy by the end of June, and the end of June is  
2 within our latest projections for our liquidity runway.

3 If we're able to achieve this, Your Honor, that  
4 would mean that Celsius would be in and out of bankruptcy in  
5 under one year. And I know that this process is taking much  
6 longer than many account holders would like, but we now have  
7 selected our stalking horse bidder, proposed plan sponsor.  
8 We're picking up steam; we're headed for the exit.

9 So turning more formally now to exclusivity. The  
10 incremental progress that we've made over the past months  
11 and certainly weeks is evidence that the Chapter 11 process  
12 is working as intended, to allow the Debtors the time to  
13 develop a transaction and work to build a consensus for that  
14 transaction.

15 At our last hearing in February, we just had  
16 PowerPoint slides. Now, we have a binding agreement that's  
17 signed by the proposed plan sponsor and the committee. And  
18 we've made progress with other stakeholders too. We have a  
19 settlement with the custody holders that will be heard on  
20 March 21st.

21 And I'm pleased to report that we now have an  
22 agreement in principle with the ad hoc group of withhold  
23 holders -- say that five times fast -- but we need to  
24 finalize that documentation, but we expect to file a motion  
25 to approve that settlement in the coming days and have that



1 heard at our April omnibus hearing.

2 We've made good progress with the borrower ad hoc  
3 group as well. We've had several constructive calls with  
4 them to address their comments and questions on the retail  
5 loan treatment. We continue to engage with the regulators  
6 as well. We have regular calls with them, have provided  
7 diligence, and answered a variety of different questions  
8 that they have about the plan.

9 Now, I think it's notable how few supplemental  
10 objections were filed as part of the supplemental objection  
11 deadline. There were objections filed by the withhold ad  
12 hoc group, which I believe is now resolved given our  
13 agreement in principle. There's an objection by the  
14 borrower ad hoc group. I don't know how Mr. Adler intends  
15 to proceed today, but I know that we've had very  
16 constructive discussions with him and we intend to keep  
17 moving those forward.

18 There were a few other pro se account holders that  
19 filed objections. You know, I believe that those are  
20 objections really to confirmation of the plan, not really an  
21 objection to the extension of exclusivity. I can turn to  
22 those in a moment.

23 But I think it's notable that there weren't  
24 objections by any of the regulators. We understand that  
25 that was intentional, given the constructive dialogue that

1 we've had. To be clear, obviously, we have to keep talking  
2 to the regulators. My comments shouldn't be interpreted to  
3 mean that the regulators are signed off on the transaction  
4 or anything like that, but I think it's evidence that the  
5 process is working. We're speaking to our key stakeholders  
6 and we're making incremental progress from each hearing.  
7 This is exactly what the exclusivity deadline is designed to  
8 cause and that's exactly how it has worked here.

9 So let me pause there to see if Your Honor has any  
10 initial comments and then I can turn it over to the  
11 committee and any other party that wishes to be heard and I  
12 can address any remaining objections after they're raised.

13 THE COURT: Well, let me hear from any parties who  
14 support the requested extension of exclusivity; it's a 23-  
15 day extension. Do you want to be heard, Mr. Colodny, are  
16 you going to speak for the committee?

17 MR. COLODNY: Yes, Your Honor. Aaron Colodny from  
18 White & Case on behalf of the Official Committee of  
19 Unsecured Creditors.

20 As Mr. Koenig describes, we are making progress  
21 towards the Chapter 11 plan and resolving these Chapter 11  
22 cases. I don't want to tread over too much of what Mr.  
23 Koenig said, but at this point, I will say that the  
24 committee believes the NovaWulf transaction presents the  
25 best opportunity to maximize value for creditors and the

1 most certain path to conclude these Chapter 11 cases in a  
2 timely manner.

3 But critically, the committee's support for the  
4 plan support agreement and the NovaWulf transaction is  
5 conditioned on the ability of both the committee and the  
6 Debtors to continue to develop and consider other bids in  
7 the coming weeks and months.

8 Currently, our support is for NovaWulf to be a  
9 stalking horse and we remain open to all options and better  
10 alternatives. If any better alternative is received, the  
11 Debtors and the committee have the ability to hold an  
12 auction to determine the highest and best proposed bid.

13 THE COURT: Let me ask this -- I don't know -- Mr.  
14 Koenig or Mr. Colodny. Are there any -- without naming them  
15 at this point, are there other parties who are kicking the  
16 tires that you've been, you know, sharing information with?  
17 I guess let me ask -- one of you can tell me that -- Mr.  
18 Koenig.

19 MR. KOENIG: Sure, Your Honor. Again, Chris  
20 Koenig.

21 We have ongoing dialogues with -- there's one  
22 bidder that is still -- you know, we're still having an  
23 ongoing dialogue with. And obviously, if some other bidder  
24 emerges as part of the process, we'll continue to talk to  
25 them too.

1 THE COURT: All right. Mr. Colodny, anything you  
2 want to add on that? Again, I don't want to know the names  
3 at this point. I'm just interested in knowing if there are  
4 more parties involved.

5 MR. COLODNY: You beat me by one sentence, Your  
6 Honor. You know, two days ago, the Debtors and the  
7 committee met with the interested party that Mr. Koenig was  
8 referring to. You know, we are interested in developing  
9 that bid. We currently don't believe that it provides the  
10 higher and better transaction, but we're optimistic that it  
11 could get there.

12 And, you know, I just want to be absolutely clear  
13 that we are committed to get the most value to account  
14 holders as soon as possible; that's our task and I believe  
15 the Debtors are in the same boat with us on that.

16 THE COURT: Thanks, Mr. Colodny. Does anybody  
17 want to speak in support of the extension of exclusivity  
18 that's been requested?

19 All right, let me turn to the objections. I'm  
20 going to go through in the order in which I have them in my  
21 notes. I know Mr. Adler, you had your hand raised, but  
22 we'll get to you, okay?

23 So the first one in my notes is Mr. Ubierna de las  
24 Heras. The objection is at ECF 1996. Do you wish to be  
25 heard?

1 Deanna, can you tell me whether he's signed in  
2 today?

3 CLERK: Yes, he is signed in. Mr. de las Heras?

4 THE COURT: All right, I'll give him another  
5 chance. The next in my notes, I have the ad hoc group of  
6 withhold account holders and their objection is at ECF 1940.

7 MS. KOVSKY: Good morning, Your Honor. Deb Kovsky  
8 for the ad hoc group. Are you able to hear me okay?

9 THE COURT: Yes, I can. Thank you very much.  
10 Good morning.

11 MS. KOVSKY: Good morning. Further to what Mr.  
12 Koenig said, we do have an agreement in principle between  
13 the Debtors, the committee, and the withhold account  
14 holders. I wanted to thank counsel for the Debtors and  
15 counsel for the committee for working productively with us  
16 towards a consensual resolution.

17 Based on our agreement in principle, we'll  
18 withdraw our objection to the extension of exclusivity with  
19 all rights reserved with respect to the plan.

20 THE COURT: Thank you very much, Miss Kovsky. All  
21 right, next on my list is Mr. Herrmann, which his objection  
22 is at ECF 2015.

23 MR. HERRMANN: Immanuel Herrmann, pro se creditor.  
24 Thank you, Your Honor.

25 THE COURT: Good morning.

1 MR. HERRMANN: Good morning. So, yeah, I don't  
2 have a whole lot to say about this. I'm okay with a short-  
3 term extension, so I can withdraw my objection.

4 The one thing I will say is I think it would be  
5 good to get alternative plans made public so that creditors  
6 can decide if they're better and not just have it sort of  
7 decided behind the scenes. I understand there's some other  
8 motion we can raise this in the context of, so I can look at  
9 that. I believe the Debtors mentioned that in their reply  
10 so I'll take a look at that.

11 THE COURT: All right. Thanks, Mr. Herrmann.  
12 Miss Cornell, the U.S. Trustee, the objection was at ECF  
13 2010.

14 MS. CORNELL: Good morning again, Your Honor.  
15 Shara Cornell with the Office of the United States Trustee.

16 Our office still has some questions regarding the  
17 liquidity through the end of the solicitation period  
18 requested by the Debtors. And obviously, some of our other  
19 questions about the plan itself still persist, but we are  
20 working constructively with the Debtors and the committee to  
21 get more answers.

22 I cannot withdraw our objection at this time, but  
23 I can report that we are working constructively on those  
24 issues.

25 THE COURT: All right. Thanks very much, Miss

1 Cornell.

2 MS. CORNELL: Thank you.

3 THE COURT: All right. The ad hoc group of  
4 borrowers, the objection is at ECF 2013.

5 MR. ADLER: Good morning, Your Honor. David Adler  
6 from McCarter & English.

7 I can also report that we've had a number of  
8 meetings with the Debtor and the committee and that we are  
9 making, I believe, progress. We still do not have a  
10 resolution that is acceptable or satisfactory on the issues  
11 that I raised in my objection with respect to the  
12 availability of all borrowers to participate in the program,  
13 number one. And, number two, ensuring --

14 THE COURT: Some of that has to do with  
15 eligibility within particular states; am I correct?

16 MR. ADLER: Right. So, for example, Your Honor,  
17 there are a number of members in the ad hoc group who are in  
18 foreign countries -- I think Australia, Switzerland, Spain -  
19 - and we want to make certain that the program that's  
20 available is available to all borrowers, number one.

21 Number two, we obviously are concerned about this  
22 extension of the loans. We want to make sure that for the  
23 borrowers that sign up, they're not signing up for another  
24 situation like Celsius of FTX.

25 We're working on those issues, Your Honor. I am

1 not going to press the objection since we're talking about  
2 three weeks. Obviously, we're hopeful that we can reach a  
3 resolution on these issues with the Debtor and the  
4 interested parties and the bidder. We have been contacted  
5 by other interested parties as well, who may make a bid.

6 So I guess, Your Honor, we'll see how things play  
7 out when we get to March 21st on the motion for the bid.  
8 Okay?

9 THE COURT: Okay. Thanks, Mr. Adler. Thank you  
10 very much. Mr. Frishberg, your objection is at ECF 2014.

11 MR. FRISHBERG: Thank you, Your Honor. I agree  
12 with most of what the other people have said, especially Mr.  
13 Herrmann. I do think that basically making the bids public  
14 would be quite useful for creditors to see what the other  
15 options are and transparency, as people have said, is the  
16 best disinfectant.

17 It would make me feel a lot better knowing that  
18 the best bid is actually being picked and not what the  
19 committee or the special committee feels is the best bid or  
20 what is best for creditors.

21 Yeah, that's about it. Thanks so much and have a  
22 great day, Your Honor.

23 THE COURT: All right. Thanks very much, Mr.  
24 Frishberg.

25 Mr. Koenig, are there any other firm proposals



1 other than expressions of interest. I mean, one of the  
2 issues, Mr. Frishberg, about what you say is, you know,  
3 people come in and kick the tires and express interest, but  
4 there's nothing binding about it, and then they're unwilling  
5 to sign on the dotted line to commit.

6 So I don't know whether -- Mr. Koenig, are there  
7 competing firm offers at this stage?

8 MR. KOENIG: Your Honor, again for the record,  
9 Chris Koenig.

10 There's not any other firm offers at this point.  
11 I'd describe it more as an initial indication of interest  
12 and we've had dialogue and we intend to continue that  
13 dialogue and maybe it will ripen into a binding commitment  
14 or not, but at this point, we certainly don't have that  
15 standing here today.

16 THE COURT: Okay, thank you. All right, is there  
17 anybody else who wishes to be heard? At least in my notes,  
18 I think I have now covered all of the objections that I have  
19 noted. Is there anybody else who wants to speak in  
20 opposition to the extension of exclusivity? All right.

21 CLERK: Sorry, Judge. You have one raised hand,  
22 Lawrence Porter.

23 THE COURT: All right, Mr. Porter. You need to  
24 unmute.

25 CLERK: I'm asking you to unmute, Mr. Porter.

1 THE COURT: All right, go ahead. You were unmuted  
2 and then you muted again.

3 CLERK: All right. I'm asking -- there you are.

4 THE COURT: Go ahead.

5 MR. PORTER: Thank you again, Your Honor. This is  
6 not a reorganization of Celsius Network. This is a new  
7 company coming in and they are trying to turn us into hedge  
8 fund investors. We feel NovaWulf's plan is predatory. We  
9 would like to see competitive bids and try to get the best  
10 outcome for creditors. Please do not extend this Celsius  
11 exclusivity.

12 Thank you, Your Honor.

13 THE COURT: All right, Mr. Porter. My only  
14 comment is, you know, it's the only firm offer that's been  
15 made. There is a procedure that's established. Both the  
16 committee and the Debtor, I believe them when they say  
17 they're committed to the highest and best offer. Things  
18 that might go to objections to a disclosure statement or  
19 plan are premature for today but thank you for your  
20 comments.

21 Anybody else who wishes to be heard? All right.  
22 I'll be brief in my analysis.

23 I'm going to grant the requested extension of  
24 exclusivity. The reasons for that are the Debtors have now  
25 proposed a plan structure, entered into a plan sponsor

1 agreement, and have reached a settlement with the custody  
2 group. The Adelpia factors, and I think I've talked about  
3 the Adelpia case before; it's one of the leading cases in  
4 this district in terms of the factors for approving an  
5 extension of exclusivity. The Adelpia factors  
6 overwhelmingly support the extension of exclusivity.

7 I won't spend a lot of time on it, but this case  
8 is large and complex. In my view, progress has been made.  
9 In my view, the creditors will not be prejudiced by an  
10 extension. From all indications, the Debtor is paying its  
11 bills as they come due, but it is, there's no question,  
12 using customer funds to do so. That would be a negative  
13 factor.

14 There is no evidence that the Debtor is seeking an  
15 extension to pressure creditors. Indeed, this has been for  
16 some time now. I'm very appreciative of the fact that the  
17 committee has been working very cooperatively with the  
18 Debtors in trying to come to a value maximizing transaction.

19 Next, the amount of time that has elapsed, again,  
20 also weighs in favor of an extension. The reality is, in  
21 large Chapter 11 cases, it can take quite some time to move  
22 those cases forward. By those standards, this actually has  
23 been fairly prompt.

24 So on balance, the Adelpia factors favor the  
25 extension of exclusivity. The Debtors have a fairly

1 detailed plan structure with dates to come forward with the  
2 disclosure statement and move forward. In terms of the  
3 NovaWulf transaction, while we don't have them on today, the  
4 bid protections that have been asked for; they'll be taken  
5 up at another time. But there's a broad fiduciary out so  
6 that if a higher and better transaction comes forward, there  
7 certainly is the hope that that will take place.

8 Let me make a couple of comments. Mr. Koenig and  
9 Mr. Colodny, there are a lot of unsecured creditors in this  
10 case, many of them pro se, some may be lawyers, most not.  
11 There are ad hoc committees represented by counsel, the  
12 committee is represented by counsel.

13 It's my hope that this disclosure statement, when  
14 you provide it, will have a pretty thorough plain English  
15 executive summary that all creditors -- I mean, they can  
16 look -- hopefully, they'll read the whole thing. You know,  
17 the problem with disclosure statements necessarily, they're  
18 quite lengthy. And the executive summary, obviously, it  
19 needs to be accurate and fair, but it's very important for  
20 creditors to be able to read that, understand what's  
21 proposed.

22 So I would hope that when you file a proposed  
23 disclosure statement, it will have a very plain English  
24 executive summary that will sort of tell the story and put  
25 it together.

1           You know, there have been -- the Court continues  
2           to receive many communications and they fall into a couple  
3           of different categories. And I'm sure you're seeing the  
4           same things, both the committee and the Debtor, and I assume  
5           the U.S. Trustee and the other ad hoc committees as well.

6           There's been a lot of concern about the potential  
7           for clawback actions. I understand in the framework for  
8           those creditors who vote in favor, anybody with less than  
9           \$100,000, as I understand it right now. The outline --  
10          anybody with less than \$100,000 potential clawback who votes  
11          in favor would not be -- there would not be a clawback  
12          action.

13          I think all of those -- you know, we've had  
14          discussions about clawback actions a number of times. This  
15          obviously came up with respect to the custody account  
16          holders because most of those transfers into custody  
17          accounts happened 89 days before the petition date.

18          Under the bankruptcy law, you know, to some extent  
19          the Debtors and the committee and other professionals, they  
20          have to follow the law. Yes, and I commented earlier in the  
21          case, there certainly can be a consensual resolution of  
22          clawbacks and that, in part, is what's happened with respect  
23          to the custody account holders because of the potential --  
24          other than the pure custody who've been receiving their  
25          distributions, the custody account holders faced the

1 potential of clawback actions. There is a proposed  
2 settlement. People, as I understand it, have the  
3 opportunity to opt out of it and take their chances.

4 I'm mindful of the concerns that many people have.  
5 You know, the issue about people who withdrew their -- let's  
6 put the insiders apart because they're excluded from this.  
7 The insiders, I think, appropriately are treated  
8 differently. But for the non-insiders, you know, a very  
9 fundamental -- I've talked about this before, both in  
10 writing and orally at hearings.

11 The very fundamental policy of bankruptcy is a  
12 quality of distribution. If some creditors were able to  
13 withdraw all of their funds within the 90 days and in effect  
14 recovered 100 percent of what they believe their claim was,  
15 it has a significant impact on the remaining unsecured  
16 creditors whose funds were still on deposit on the petition  
17 date.

18 And so, some of this is not a question -- I follow  
19 the law. There's certainly, you know, in some of the  
20 settlements that have been proposed, a substantial recovery  
21 by custody account holders, but not 100 percent, so we'll  
22 have to see how this all shakes out.

23 But I want people to understand, I don't view this  
24 as an issue of either the committee or the Debtors trying to  
25 take unfair advantage of those people who were able to

1 withdraw their funds within 90 days and may be subject to  
2 avoidance actions. That isn't to resolve any issues about  
3 defenses because there certainly are defenses. I'm mindful  
4 that some people have raised the issue of the expense of  
5 being able to defend against those actions.

6 The Bankruptcy Code is what the Bankruptcy Code  
7 is. The issue about avoidance and preferences is an  
8 important part of the Bankruptcy Code and it's intended to  
9 provide a quality of distribution among all creditors. It  
10 would be unfortunate if some small group of creditors was  
11 able to be substantially advantaged while others are left  
12 holding the back, in effect.

13 So I'll make those comments now. That isn't to  
14 say that there won't be an appropriate consensual resolution  
15 of those issues, but there's certainly been quite a few  
16 things that I've seen from pro ses who are very concerned  
17 about the avoidance actions.

18 I'm certainly committed, if there are avoidance  
19 actions, to find a way to expedite it so we can get through  
20 this and resolve the issue. It's my hope that creditors  
21 will be able to recover the maximum amount of their claims  
22 within the shortest period of time. It's certainly in my  
23 interest to have this dragged out.

24 Is there anybody else who wishes to be heard at  
25 this point before we move on from the exclusivity motion?

1 All right, Mr. Koenig, let's move on on the  
2 agenda.

3 MR. KOENIG: Thank you, Your Honor. The next item  
4 on the agenda is a stipulation that I believe the committee  
5 filed, so I'll turn it over to Mr. Colodny.

6 MR. COLODNY: Your Honor, Aaron Colodny again on  
7 behalf of the Official Committee of Unsecured Creditors.

8 Since the beginning of these cases, the committee  
9 has investigated the Debtors and the events leading up to  
10 these Chapter 11 cases. It has done so in connection with  
11 the examiner's report and done so and attempted to do so  
12 efficiently alongside the examiner to minimize the  
13 administrative burden on these estates.

14 That investigation has revealed prepetition  
15 conduct by the Debtors' former management that was  
16 reprehensible. Individuals who are identified in the  
17 proposed Complaint that is attached to the stipulation were  
18 aware that Celsius was promising its customers interest it  
19 could not afford and they did nothing to fix the problem.  
20 They made negligent, reckless, and sometimes self-interested  
21 investments that caused Celsius to lose billions of dollars  
22 of customer assets.

23 They could not keep track of Celsius's position,  
24 which resulted in hundreds of millions of dollars of losses.  
25 And even after they realized those losses had occurred, they



1 did not adequately fix the problem. It caused Celsius to  
2 spend hundreds of millions of dollars of customer money to  
3 strategically inflate the price of CEL Token, and then  
4 caused the company to purchase their own CEL Tokens at those  
5 inflated prices.

6 Employees and insiders sat idly by as Mr.  
7 Mashinsky recklessly bet hundreds of millions of dollars on  
8 the movement of cryptocurrency markets, and they covered up  
9 Mr. Mashinsky's repeated lies about Celsius investments and  
10 its financial condition.

11 And finally, when it became apparent that  
12 Celsius's business was doomed and it would file for  
13 bankruptcy, many of those individuals withdrew their assets  
14 while they were actively encouraging customers to keep their  
15 assets on the platform. Those prospective defendants caused  
16 the situation we all find ourselves in today.

17 But to be clear, this was not solely created by  
18 Mr. Mashinsky. Either by direct action or systematic  
19 omission, each of the defendants and the other employees and  
20 other interpreted parties identified in the Complaint is  
21 liable to Celsius and its creditors for the damage they  
22 caused.

23 By the stipulation and agreed order, the Debtors  
24 and the special committee have agreed to place those causes  
25 of action and other claims against parties to be agreed with

1 the committee and a litigation vehicle to be pursued after  
2 the effective date. The stipulation also provides the  
3 committee and the Debtors with the ability to come to this  
4 Court on an emergency basis and request relief if needed to  
5 preserve those claims.

6 The committee understands that many other  
7 governmental organizations are also investigating Mr.  
8 Mashinsky and his co-conspirators. We're available to  
9 discuss our investigation with those entities and help  
10 ensure that any recovery is returned to the victims who were  
11 harmed by the proposed defendant's actions.

12 We received one objection from a group of security  
13 class action plaintiffs with respect to the treatment of the  
14 Debtors' directors and officers. We've added language  
15 resolving that objection and filed a revised form of order  
16 at Docket No. 2193.

17 We request that the Court enter the stipulation,  
18 which will ensure that these causes of action are preserved  
19 against the Debtors' former management are preserved for the  
20 benefit of the estate.

21 THE COURT: Why don't you explain for the record,  
22 if you would, Mr. Colodny, what the changes that were made.  
23 The original stipulation was at 2154 and, as you say, the  
24 revised joint stipulation is 2913. Just explain for the  
25 record so people understand what change was made in

1 response. And I'll certainly give, if the security  
2 plaintiffs want to be heard, I'll give them an opportunity,  
3 but why don't you just go ahead and just explain for the  
4 record what changes have been made.

5 MR. COLODNY: Of course, Your Honor. So the first  
6 change was to make it clear that only the Debtors' interest  
7 in the directors and officers insurance policy is going to  
8 be transferred and that those policies will only be  
9 transferred if allowed by the Bankruptcy Code, applicable  
10 law, or the terms of the policy. And those changes were  
11 intended to make sure that all that is transferred is what  
12 is owned by the Debtors and what is allowed by the law.

13 The second change was just to clarify that nothing  
14 in the stipulation is going to determine whether the  
15 securities class action is property of the Debtors' estate  
16 or not. It simply punts that for another day.

17 But with those changes, we believe their objection  
18 is resolved.

19 THE COURT: Thank you very much, Mr. Colodny.  
20 Does anybody else wish to be heard? Mr. Etkin.

21 MR. ETKIN: Yes, Your Honor. Michael Etkin,  
22 Lowenstein Sandler on behalf of the proposed lead  
23 plaintiffs.

24 We appreciate the efforts of Mr. Colodny to add  
25 that language. Obviously, our concern -- it was a limited

1 objection, which set forth our concerns. We think those  
2 concerns have been addressed. We would note that we don't  
3 understand how the direct claims of customers under the  
4 securities laws could ever be causes of action or claims  
5 owned by the Debtor, but we did agree to punt that, and to  
6 the extent that issue comes up, we'll resolve it at that  
7 time.

8 So with that, our objection has been resolved.

9 THE COURT: Thanks very much, Mr. Etkin. All  
10 right. Does anybody wish to be heard with respect to this  
11 stipulation?

12 MR. KOENIG: Your Honor, Chris Koenig for the  
13 Debtors, just very briefly.

14 THE COURT: Go ahead, Mr. Koenig.

15 MR. KOENIG: We agree with Mr. Colodny that the  
16 examiner's report demonstrates reprehensible conduct by the  
17 Debtors' former management team and obviously the word  
18 former is very important. We have a new management team.  
19 We have a special committee that was appointed just before  
20 the petition date.

21 That special committee, that new management team  
22 has fully complied with all of investigations, including by  
23 the committee, the examiner, and various governmental  
24 authorities as well, and it's because we think that this  
25 conduct is so reprehensible that we agreed to turn over

1 these claims to a litigation trust.

2 In many large Chapter 11 cases, we would be  
3 standing here not with a stipulation but with a fight about  
4 standing and whether the committee had demonstrated standing  
5 to pursue these claims. It doesn't make sense to do that  
6 here. We think that these claims should be pursued at the  
7 appropriate time.

8 But given the progress that we have made to date,  
9 we are, as I said a few minutes ago, we're headed for the  
10 exit and we don't want these claims to be a distraction to  
11 the ultimate goal of getting us out of bankruptcy as fast as  
12 possible, returning distributions of cryptocurrency to  
13 customers as fast as possible. And this will be taken up  
14 promptly, you know, on emergence and pursued for the benefit  
15 of account holders.

16 But just wanted to be clear that, you know, we  
17 fully support the stipulation given the unique facts and  
18 circumstances here. Thank you.

19 THE COURT: Thank you, Mr. Koenig. All right.  
20 The joint stipulation, to the extent there are any remaining  
21 objections overrule. I don't think there are any at this  
22 point. It's approved. Just submit a Word copy and it'll be  
23 promptly entered, okay?

24 MR. COLODNY: We submitted that yesterday. Thank  
25 you, Your Honor.

1 THE COURT: All right. Thanks very much. All  
2 right, let's move on. The next, 4, 5, and 6 on the agenda  
3 all relate to motions to strike designations of the record  
4 for pending appeals. It first relates to the appeal by Mr.  
5 Frishberg. I'm going to take these all together, the  
6 Khanuja appeal, and the Steadman appeal.

7 You know, there's no question that the motion to  
8 strike is properly made before the Bankruptcy Court, always  
9 struck me as a little odd that the Bankruptcy Court is being  
10 asked to decide what should be part of the record on appeal,  
11 but that's what I guess Rule 8009 deals with.

12 Are you going to deal with this, Mr. Koenig?

13 MR. KOENIG: I am, Your Honor, thank you. So  
14 again, I'll take these all together. These are all appeals  
15 of the Court's earn ruling in January. The purpose of  
16 designating a record on appeal is to accurately reflect what  
17 actually took place before the lower court.

18 The appellants sought to introduce over 250  
19 different items, most of which are simply not related to  
20 what took place in earn stablecoin ruling. Many of the  
21 items that they seek to designate were not even existence at  
22 the time of the earn trial, so they certainly could not be  
23 part of the record on appeal. They certainly were not even  
24 in existence at the time that the Court held the proceeding.

25 And as Your Honor pointed out, Bankruptcy Rule

1 8009(e) provides that if there's a dispute about what the  
2 record, you know, below was that we're supposed to bring  
3 that dispute to Your Honor, so we filed the motions to  
4 strike. We met and conferred with some of the appellants a  
5 couple of days ago. We've managed to narrow the issues a  
6 little bit.

7 To be clear, we do not object to the appellate  
8 record including the motions, both the original motion, the  
9 amended motion, all the responses, the objections to those  
10 motions, the scheduling order and the responses and  
11 objections to those motions being included. And, of course,  
12 the record should include the transcripts of the hearings,  
13 the November 1st status conference and the trial on December  
14 5th.

15 But what the appellants are seeking to do is to  
16 include a bunch of wholly irrelevant documents: letters that  
17 predate the earn motion itself, documents that were created  
18 after the earn trial concluded, and purported evidence that  
19 they argue they would have introduced but for their mistake.

20 In their omnibus objection, which was filed at  
21 Docket No. 2164, the appellants cite several cases for the  
22 proposition that their mistake in failing to introduce  
23 evidence at the earn hearing means that this evidence means  
24 that this evidence should be included in the record on  
25 appeal. That's not actually what those cases say.

1           Those cases actually support our motions to  
2       strike. Specifically in Prudential Wines, the Court was  
3       talking about a mistake in designating the record on appeal,  
4       not a failure to introduce that evidence in the first place,  
5       and the district court in that case even denied the request  
6       to add additional materials on appeal because those  
7       materials were not part of the record before the Bankruptcy  
8       Court.

9           Likewise, in Food Fair, the appellants were  
10      seeking to add a related adversary proceeding that the Court  
11      described as closely related to the issue before the  
12      Bankruptcy Court. Here, the appellants are seeking to  
13      introduce materials from the custody and withhold disputes,  
14      not the earn dispute; those are not closely related.

15           So to allow the record on appeal to include items  
16      that clearly were not before the Court as part of the earn  
17      motion is improper and would deny the Debtors the right to  
18      challenge the authenticity or admissibility of these  
19      documents. For example, they're seeking to admit the  
20      depositions of the witnesses. Those depositions are hearsay  
21      and are not admissible for the truth of the matter asserted  
22      and we would have raised that objection had they sought to  
23      introduce them at the trial.

24           So in any event, what we've agreed to do with the  
25      appellants is rather than going line by line on each



1 document, which would be excruciating I think in open court,  
2 I believe that they're going to raise categories of  
3 documents that they believe should be included and, you  
4 know, we will argue that they should be excluded.

5 And Your Honor can resolve these categories of  
6 documents and then we'll agreed to meet and confer after the  
7 hearing and take Your Honor's ruling on the categories and  
8 apply it to the specific documents. I'm cautiously  
9 optimistic that we'll be able to reach, you know, an agreed  
10 form of order once we have sort of the ruling on the  
11 categories themselves.

12 So I'll pause there and see if Your Honor has any  
13 questions for me and, if not, we can turn it over to the  
14 objectors.

15 THE COURT: I don't. Mr. Frishberg.

16 MR. FRISHBERG: Thank you, Your Honor. Several of  
17 the appellants, as the Debtors have stated, had a fairly  
18 productive call with the Debtors on Monday. We agree that  
19 we can work with some stuff, but we also had some  
20 disagreements, as Mr. Koenig stated.

21 But we also have a different question, and I mean  
22 no disrespect to you, Your Honor, but does this Court even  
23 have jurisdiction over this matter since Judge  
24 (indiscernible) has already entered two orders of the docket  
25 on appeal. He's accepted the Steadman appeal to the

1 original appeal and is considering consolidating all of the  
2 appeals. That's a question I respectfully must raise.

3 THE COURT: Well, I just say this, Mr. Frishberg.  
4 It was always a surprise to me that Rule 8009 says come back  
5 to the Bankruptcy Court if there's a dispute about what  
6 should be part of the record on appeal. That's what the  
7 rule says, so I'm supposed to decide that.

8 That doesn't stop you from arguing whatever you're  
9 going to argue in the district court, whether something else  
10 should be considered or not, but the rule puts it in my  
11 court to decide it and that's what I'm going to do.

12 MR. FRISHBERG: Thank you, Your Honor. In their  
13 initial motion, the Debtors attempted to strike basically  
14 everything our designation, which was apparently an  
15 accident. But would it be all right if we got to you a new  
16 list of categorized documents by March 19th?

17 THE COURT: Look, what I would like to see is that  
18 you and Mr. Khanuja and Miss Steadman continue to try and  
19 iron this out with Mr. Koenig or his colleagues, get it  
20 narrowed down to the fullest extent you can.

21 My only concern was when you said March 19th. I  
22 don't know whether -- I'm not sure what the schedule in the  
23 district court is. I don't want to do anything to slow  
24 down, you know, the process in the district court.

25 Mr. Koenig, can you shed any light on what the

1 district court has done?

2 MR. KOENIG: Yes, Your Honor. The district court  
3 is currently considering whether to hear the appeals. The  
4 appellants have argued that Your Honor's earn order is a  
5 final order or that if it is interlocutory, it should be  
6 heard at this time.

7 The Debtors filed an objection and argued that it  
8 is not final; it is interlocutory and in an appeal, should  
9 not be granted permissively. The district court has not yet  
10 ruled on that motion -- on that objection on whether to  
11 accept the appeal and have it go forward.

12 THE COURT: All right. Mr. Frishberg, could you  
13 do this in a week by the 15th, by 5:00 p.m. Wednesday, the  
14 15th? I'd like to be able to get this done so that the  
15 district court can decide whatever it's going to decide.  
16 I'd just be cutting back -- you asked for the 17th, I'm  
17 asking whether you could do it by close of business on the  
18 15th.

19 MR. FRISHBERG: We will do our best, Your Honor.  
20 We will arrange a meet and confer with the Debtors again  
21 after we have some time to review the documents to see what  
22 we can work out.

23 THE COURT: Okay, look, it would be helpful to me.  
24 To the extent you're able to narrow your disagreements, I  
25 think it would be in everybody's interest to be able to do

1 that.

2 MR. FRISHBERG: Yes, Your Honor.

3 THE COURT: Okay. Let me just say, you know, Mr.  
4 Koenig, that may require you to sort of bend over backwards  
5 a little bit, even though you think that some things -- you  
6 know, if you want to argue to the district court it couldn't  
7 consider certain things that have been put in the record,  
8 you're obviously free to do that.

9 But let's -- this is the first time I've ever had  
10 this come up before me where anybody's had to use 8009 to  
11 try and get me to strike things from a record on appeal.  
12 You know, see what you can do, okay?

13 MR. KOENIG: Understood, Your Honor. And we  
14 wouldn't have done it if we didn't feel it was necessary,  
15 but we'll certainly endeavor to narrow the issues.

16 THE COURT: Okay. Mr. Khanuja, do you want -- Mr.  
17 Frishberg, is that an okay way to proceed?

18 MR. FRISHBERG: Yes, Your Honor. Thank you.

19 THE COURT: Okay. Mr. Khanuja, is that acceptable  
20 to you?

21 MR. KHANUJA: Yes, Your Honor. I've been  
22 listening and I think Mr. Frishberg has raised some valid  
23 concerns, but we'll work together to get these resolved with  
24 Mr. Koenig and his team.

25 THE COURT: Thank you very much. All right, Miss

1 Steadman. You're muted.

2 MS. STEADMAN: Sorry.

3 THE COURT: No, that's okay.

4 MS. STEADMAN: I just wanted to thank you.

5 THE COURT: The most common words in these remote  
6 hearings is, you're on mute, you're on mute. Go ahead.

7 MS. STEADMAN: Can you hear me now? That's  
8 another one.

9 THE COURT: I can hear you. Yes, I can hear you.

10 MS. STEADMAN: So I just wanted to thank you. I'm  
11 also in the Voyager case and you and Judge Wiles have both  
12 been very kind and understanding. These are complex cases,  
13 as you've said, and most of us are not in the legal  
14 profession and we have no idea what we're doing.

15 And I just wanted to state that my reason for the  
16 appeal was, I didn't know that the UCC was going to agree  
17 with the Debtors. And by the time I realized it, I filed a  
18 joinder on an objection in a rush because I do disagree, but  
19 I believe that -- I didn't know enough to make sure that my  
20 attorney was going to do anything. And so, then afterwards,  
21 it was kind of confusing and upsetting.

22 So just thank you for giving us the opportunity to  
23 work with the Debtors, and I want to thank Kirkland & Ellis  
24 also for working with us. And I do believe if we weren't in  
25 the situation that we're in, that we would all be getting

1 along just fine, but right now, we're one great big  
2 dysfunctional family.

3 Thank you very much.

4 THE COURT: All right, thanks Ms. Steadman. I see  
5 several hands raised. First, Mr. Anderson and then Mr.  
6 Herrmann, I'll call on you next. Go ahead, Mr. Anderson.

7 MR. ANDERSON: Hi. Can you hear me?

8 THE COURT: Yes, I can. Go ahead.

9 MR. ANDERSON: Hi. My name is Samuel Anderson and  
10 I am -- I'm sorry, I've never done this before. I wanted to  
11 bring something to the Court's attention. It's been  
12 slightly, I guess, addressed a little bit. But I wanted to  
13 say that we have what I consider to be a hostile creditor,  
14 Daniel Frishberg, who is consistently aggressive and  
15 verbally abusive to others online, and he is explicit in  
16 wasting all of our funds and is extremely juvenile.

17 THE COURT: Mr. Anderson, this is not a forum for  
18 one creditor to criticize another creditor. What I have  
19 before me now, and if you want to address that, I'll permit  
20 you to do it. There are three motions -- well, the Debtor  
21 has made motions to strike portions of the designation of  
22 the appellate record by Mr. Frishberg, Mr. Khanuja, and Miss  
23 Steadman. That's what's being discussed right now.

24 MR. ANDERSON: Okay.

25 THE COURT: If you have something to talk about

1 that, I'll permit you to do it, okay?

2 MR. ANDERSON: No, that's it. I just want to say  
3 how juvenile he was.

4 THE COURT: Well, okay. Mr. Herrmann.

5 MR. HERRMANN: Thank you, Your Honor. Immanuel  
6 Herrmann, pro se creditor. I just wanted to speak just to  
7 remind you, I think you probably saw, but I'm also on one of  
8 the appeals.

9 THE COURT: I did. I saw it.

10 MR. HERRMANN: Yeah, so I just wanted to address  
11 some of the categories.

12 THE COURT: Let me ask you to do this, because  
13 I've reviewed it, okay. I'm not ruling today. I think you  
14 definitely should be part -- you know, you've been active in  
15 this case from the start and I appreciate that. You've  
16 raised good issues, some not so good issues, but many good  
17 issues, okay.

18 What I'd like you to do is, along with Mr.  
19 Frishberg, Miss Steadman to the extent she's proceeding, and  
20 Mr. Khanuja is talk with Mr. Koenig, see if you can narrow  
21 down what the items in dispute are. As I've suggested to  
22 Mr. Koenig, you know, the world isn't going to come to an  
23 end, Mr. Koenig, if some things are included in the record  
24 on appeal, which you then argue to the district court really  
25 aren't relevant to the issues on appeal.

1           You know, the district court, you know, is not  
2           going to want to see everything on the docket; well, that's  
3           not what's been proposed, but, you know. If you want to get  
4           an appellate ruling in real time, what's important is that  
5           you provide the district court with those parts of the  
6           record that are pertinent to the matters on appeal, okay.

7           You know, you've been cooperative on many things  
8           throughout this case, Mr. Herrmann. That's what I'd like to  
9           see, see if you can narrow it down. If you can provide me  
10          with that, if I get something by next week by close of  
11          business Wednesday that shows here are the remaining  
12          disputes, I'll resolve them. Okay?

13          MR. HERRMANN: Okay, thank you, Your Honor. Yeah,  
14          I mean, I would say that, like, actually, I thought that the  
15          call was with the Debtors. I mean, we resolved a surprising  
16          amount. I think that this, it'll be far fewer than the  
17          number of items that were originally in the (crosstalk).

18          THE COURT: I know, I've got this long list of  
19          items. Rather than have to go through that, let me see, to  
20          the extent there's still a disagreement after you work it  
21          out. It sounds like you've made progress and, hopefully,  
22          both sides will show a little flexibility.

23          Look, it's in the -- it seems that on the  
24          Bankruptcy Court docket, if you think they're critically  
25          important, the district court has the ability to look at



1       them. Let's leave it at that for now, okay? Thanks, Mr.  
2       Herrmann.

3               MR. HERRMANN: All right, thank you.

4               THE COURT: All right. Now we move on to status  
5       conferences, Frishberg v. Celsius, Adversary Proceeding 22-  
6       01179. First, Mr. Frishberg.

7               MR. FRISHBERG: Thank you, Your Honor. As you  
8       likely know, there has not been very much progress on my  
9       adversary proceeding thus far since I've not served my  
10      summons. I expect to serve the summons, the second summons  
11      -- the first one I actually requested -- as soon as I  
12      receive it, which will hopefully be today. And I would know  
13      shortly before that be amending my adversary proceedings  
14      before I serve it (indiscernible) today.

15              That's about it. I mean, that's all said.

16              THE COURT: All right, thanks. Does somebody from  
17      the Debtor want to respond? Mr. Koenig, are you going to  
18      respond to this?

19              MR. KOENIG: Your Honor, Chris Koenig. We'll, of  
20      course, you know, review what Mr. Frishberg files and  
21      respond in due course.

22              THE COURT: All right, thank you very much. All  
23      right, next is Celsius Network Limited v. Fabric Ventures  
24      Group, SARL, Adversary Proceeding 23-01002. Mr. Koenig, are  
25      you going to address that?

1 MR. KOENIG: Yes, Your Honor. This is an  
2 adversary that we filed. I don't believe that the  
3 defendant's time to respond has actually run yet, but I  
4 believe that this pretrial conference was automatically  
5 scheduled --

6 THE COURT: It was.

7 MR. KOENIG: -- even though they haven't actually  
8 filed anything yet.

9 THE COURT: All right. Is anybody appearing today  
10 for Fabric Ventures? All right, we'll wait until -- have  
11 they been served at this point, Mr. Koenig?

12 MR. KOENIG: I believe so, Your Honor.

13 THE COURT: Okay. When is their deadline for  
14 response?

15 MR. KOENIG: I unfortunately don't have that in  
16 front of me, but I can give it to your chambers.

17 THE COURT: Okay. All right, the next adversary  
18 proceeding is Yanchuk v. GK8, Ltd., et al, Adversary  
19 Proceeding 23-01003. Mr. Koenig.

20 MR. KOENIG: Your Honor, we're the defendant.  
21 This adversary proceeding was filed as an adversary  
22 proceeding. It was, the Complaint was a one-page  
23 handwritten note and the plaintiff's proof of claim was  
24 attached to that handwritten note. We've reached out to her  
25 to try to, you know, have a dialogue with her to explain

1 that she doesn't need an adversary proceeding for her proof  
2 of claim to work in the claims process. To date, we haven't  
3 been able to have a constructive dialogue with the  
4 plaintiff. I don't know if she's on the line or not, but we  
5 haven't been able to move that forward.

6 THE COURT: All right. Miss Yanchuk, are you on  
7 the phone or on the line?

8 CLERK: I don't see anyone with that name, Judge.

9 THE COURT: Okay. Take what action you think is  
10 appropriate, Mr. Koenig.

11 MR. KOENIG: Thank you. All right, we've dealt  
12 with the Selendy Gay Elsberg retention, has been approved  
13 already. Moving on in the resolved matters. Why don't you  
14 update me on where things stand on Willis Towers Watson.

15 MR. KOENIG: Certainly, Your Honor. So we've  
16 agreed to file a retention application for Willis Towers  
17 Watson. We understand that that resolves the U.S. Trustee's  
18 issue. Obviously, the reserve rights on the actual  
19 retention application itself, so they're going through the  
20 conflicts checks and we're, you know, preparing the  
21 retention application.

22 We expect it to be submitted, you know, in the  
23 coming days, perhaps a week or so. But hopefully we have  
24 that on file soon and then, you know, Miss Cornell and the  
25 other parties can review the retention application and we'll

1 have it determined at a hearing.

2 THE COURT: That's fine. Miss Cornell.

3 MS. CORNELL: Thank you, Your Honor. Shara

4 Cornell on behalf of the Office of the United States

5 Trustee. That's correct. I have not seen the retention

6 application yet though. Thank you.

7 THE COURT: Thank you very much. All right. I

8 think that deals with everything on the agenda. Starting at

9 Page 11, it deals with things that have been adjourned. We  
10 don't have to deal with that today.

11 Mr. Koenig, anything else that we need to cover  
12 today?

13 MR. KOENIG: No thank you, Your Honor. We'll see  
14 you on the 21st.

15 THE COURT: All right. Thank you very much  
16 everybody and we are adjourned.

17 MR. KOENIG: Thank you.

18 CLERK: Please stop the recording.

19 (Whereupon these proceedings were concluded at  
20 12:08 PM)

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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

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